

Council Minutes – May 13, 2008

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, May 13, 2008. The Councilmembers of the City of Topeka met in regular session at 6:00 P.M., with the following Councilmembers present: Councilmembers Kennedy, Alcalá, Ortiz, Woelfel, Haynes, Swank, Blackburn and Harmon -8. Mayor Bunten -1. Absent: Councilmember Preisner -1.

AFTER THE MEETING was called to order, Pastor Greg Varney, Light of the World Christian Center gave the invocation.

THE PLEDGE OF ALLEGIANCE was recited by those present in the chamber.

THE CONSENT AGENDA was presented as follows:

A COMMISSION APPOINTMENT recommending the re-appointment of Lorean Williams to the Human Relations Board for a term that would expire on May 31, 2010 was presented.

A FINAL PLAT for East Acres Subdivision No. 2 generally located at the intersection of SE Adams Street and SE 15th Street within the City of Topeka, Shawnee County, Kansas was presented. (P07/37)

Minutes of the regular meeting of May 6, 2008 were presented.

2008 Open After Midnight License renewal applications bearing the approval of the Chief of Police and City Inspectors were presented for the following:

<u>BUSINESS NAME</u>	<u>ADDRESS</u>
Crescent Stores Corporation #48	1531 SW Wanamaker Road
Crescent Stores Corporation #49	2836 SW Fairlawn Road
Crescent Stores Corporation #50	600 SW Fairlawn Road
20's West, L.L.C.	901 SW Fairlawn Road

2008 Cereal Malt Beverage License renewal applications bearing the approval of the

Chief of Police and City Inspectors were presented for the following:

<u>BUSINESS NAME</u>	<u>ADDRESS</u>
Berkshire Country Club	3720 SW 45 th Street
California BP Amoco	2740 California Avenue
Casey's General Store	4441 SE California Avenue
Casey's General Store	600 SE Rice Road
Conoco Food Mart Super Store	2121 SW Wanamaker Road
Dillon's #28	300 W 29 th Street
Dillon's #47	2815 W 29 th Street
Dillon's #54	800 NW 25 th Street
Dillon's #58	1400 Huntoon
Dillon's #64	5720 SW 21 st Street
Dillon's #87	5311 SW 22 nd Place
Dillon's #88	4015 SW 10 th Street
Dillon's #67	2010 SE 29 th Street
The Dock	2838 SE 29 th Street
Downtown Amoco	600 SE Quincy
East Quick Stop	3100 SE 6 th Street
The Goose Express	2901 SE Fremont
Herman's Beef & Sausage House	823 W Gordon
Hy-Vee	2951 SW Wanamaker Road
I-70 Amoco	1000 SW Wanamaker Road
In A Pinch	706 SW Fairlawn Road
Kelly Express	1001 SW Wanamaker Road
Kwik Shop	746 NE Wabash
Kwik Shop	1414 SW 17 th Street
Kwik Shop	4500 SW Topeka Boulevard
Kwik Shop	2019 SW 21 st Street
Kwik Shop	5633 SW 21 st Street
Kwik Shop	2277 SW 10 th Street
Kwik Shop	1700 Topeka Boulevard
Kwik Shop	102 SW 37 th Street
Kwik Shop	1114 NW Topeka Boulevard
Lakeview Amoco	3000 SE Croco Road
Larry's Shortstop	3834 SW Topeka Boulevard
Mike's IGA	2620 NE Sardou
Oakmart Amoco	2518 NE Seward
Prize Package	1420 E 6 th Street
Quality Gas & Shop Inc.	1900 N Topeka Boulevard
Rex's Cenex	2855 SW Wanamaker Road
6 th St. Quick Stop & Smoke	1107 SW 6 th Avenue
Star 2 d/b/a Thanvika	1320 SW 6 th Avenue
Tammy's On the Go	3335 Gage Boulevard

BUSINESS NAME

Tilton's Westside
Tilton's Oakland Market
Vaishnavi

ADDRESS

1100 W 6th Street
1905 Seward
2201 SW 6th Avenue

Councilmember Alcala moved to approve the consent agenda. The motion seconded by Councilmember Ortiz carried unanimously. (8-0-0)

A NOTICE OF PUBLIC HEARING

Notice is hereby given that there will be a special meeting of the Councilmembers of the City of Topeka, Shawnee County, Kansas, held Tuesday, May 13, 2008, at 6:00 P.M. in conjunction with vacation request V08RA/1 by Marco A. Maldonado to vacate a portion of the platted vehicular traffic restriction along SE California on property located at 2001 SE 10th Avenue, City of Topeka, Shawnee County, Kansas.

ORDINANCE NO. 19084 introduced by City Manager Norton N. Bonaparte, Jr., relating to the vacation of a portion of the platted vehicular traffic restriction along SE California on property located at 2001 SE 10th Avenue, City of Topeka, Shawnee County, Kansas placed on first reading May 6, 2008 was again presented. (V08RA/1)

Norton N. Bonaparte, Jr., City Manager gave the staff report.

Councilmember Ortiz moved to close the public hearing and adopt the ordinance. The motion seconded by Councilmember Alcala carried unanimously. (8-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Kennedy, Alcala, Ortiz, Woelfel, Haynes, Swank, Blackburn and Harmon -8. Absent: Preisner -1.

A RESOLUTION introduced by Deputy Mayor Jeff Preisner, terminating the lease purchase agreement of a Robinson R-44 helicopter was presented. The resolution was deferred from the meeting of May 6, 2008.

Norton N. Bonaparte, Jr., City Manager gave the staff report.

Braxton Copley, Interim City Attorney distributed an amendment to the resolution. He stated that line 19 has been amended to read, “that the document known as City of Topeka Contract No. 37914 is void and of no legal effect pursuant to K.S.A. 10-1119.”

Mayor Bunten stated that he opposes the language as it is written on lines 7 through 13 of the resolution. He stated that the lease purchase agreement was originally approved by a communication, not a resolution.

Councilmember Blackburn moved to amend line 16 of the resolution by replacing the word “K.S.A. 10-1116c” with the word “K.S.A. 10-1116c(d).” The motion was seconded by Councilmember Swank.

Councilmember Haynes made a substitute motion to amend line 7 of the resolution by deleting the word “the” after the word “2007” and inserting the words “five members of” and deleting the word “authorized” and inserting the words “voted to authorize”; and amend line 8 by deleting the words “enter into” and inserting the words “sign a contract to finance” after the word “to”; and amend line 11 by deleting the word “executed” and inserting the words “did sign.” The motion died due to a lack of a second.

Councilmember Swank withdrew the second to the motion to amend line 16 of the resolution.

Councilmember Blackburn asked if the resolution is approved as presented could it be interpreted that the Council knew the lease purchase agreement was in violation of the Kansas Cash Basis Law.

Braxton Copley, Interim City Attorney stated that in his opinion it would not; however, to eliminate any misinterpretation of the language he would suggest deleting the words

“specifically provisions in K.S.A. 10-116b and K.S.A. 10-116c” beginning on line 15 of the resolution.

Councilmember Kennedy moved to defer the resolution for no longer than 30 days to allow time for staff to prepare an amended document. The motion seconded by Councilmember Blackburn carried. Councilmember Alcalá abstained. (7-0-1)

ORDINANCE NO. 19085 introduced by City Manager Norton N. Bonaparte, Jr., pertaining to an amendment to the text and map of the Topeka Comprehensive Metropolitan Plan placed on first reading May 6, 2008 was again presented. The ordinance was remanded back to the Planning Commission from the meeting of March 25, 2008. (CPA 08/1)

Norton N. Bonaparte, Jr., City Manager gave the staff report.

Kim Brown, Historic Holliday Park Neighborhood Improvement Association President encouraged the Council to adopt the ordinance. She stated that NIA members have worked hard to move forward with the goals that have been set to improve the neighborhood.

Councilmember Kennedy moved to adopt the ordinance. The motion seconded by Councilmember Alcalá carried unanimously. (8-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Kennedy, Alcalá, Ortiz, Woelfel, Haynes, Swank, Blackburn and Harmon -8. Absent: Preisner -1.

ORDINANCE NO. 19086 introduced by City Manager Norton N. Bonaparte, Jr., amending City of Topeka Code Sections 130-71, 130-72, 130-73, and 130-74 concerning Sidewalk Cafes in Downtown Business Area, and specifically repealing said original sections placed on first reading May 6, 2008 was again presented.

Norton N. Bonaparte, Jr., City Manager gave the staff report.

Susan Mahoney, Downtown Topeka, Inc., Executive Director stated that approval of the ordinance would allow downtown businesses to extend their premises outdoors to provide food and beverage services. She noted that patrons must keep alcoholic beverages within the fenced area. She also stated that an application process has been established so that all businesses follow the same guidelines that were established to fit into the downtown area redevelopment plan.

Councilmember Alcala asked if the fences would be temporary or permanent. He also asked if the fences would be ADA compliant.

Councilmember Ortiz asked if all downtown businesses would be required to install a sidewalk fence.

Susan Mahoney stated that only businesses that want to serve alcoholic beverages outside their premises would be required to follow the requirement. She reported that the fences would be a temporary structure with a height requirement of 36 to 42 inches high and ADA accessible.

Councilmember Swank asked if the fence requirement only applies to the downtown business area.

Braxton Copley, Interim City Attorney stated that the ordinance applies to all areas of the city.

Councilmember Kennedy moved to adopt the ordinance. The motion seconded by Councilmember Ortiz carried unanimously. (8-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Kennedy, Alcala, Ortiz, Woelfel, Haynes, Swank, Blackburn and Harmon -8. Absent: Preisner -1.

A REQUEST from Michael A. Flagler seeking an annexation exemption prior to receiving water and sewer service from the City as allowed under Section 146-37(c)(2) and

Section 146-256(c)(6)(ii) on a 8.69-acre tract of land located at 2330 NW Menoken Drive within unincorporated Shawnee County, Kansas was presented.

Norton N. Bonaparte, Jr., City Manager gave the staff report.

Councilmember Woelfel moved to approve the request for annexation exemption. The motion seconded by Councilmember Ortiz carried unanimously. (8-0-0)

A PETITION, A PROJECT BUDGET in the amount of \$1,236,068 and RESOLUTION NO. 8062 introduced by City Manager Norton N. Bonaparte, Jr., authorizing Street Improvement Project No. T-601004.00 (HTE 606410) which provides for paving streets in Lauren's Bay Estates as more specifically described herein was presented.

Norton N. Bonaparte, Jr., City Manager gave the staff report.

Councilmember Alcala moved to approve the petition, project budget and resolution. The motion seconded by Councilmember Ortiz carried unanimously. (8-0-0)

ORDINANCE NO. 19087 introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period of April 21, 2008, through April 27, 2008, and enumerating said expenditures therein was presented for first and final reading.

Norton N. Bonaparte, Jr., City Manager gave the staff report.

Councilmember Ortiz moved to adopt the ordinance. The motion seconded by Councilmember Kennedy carried. Councilmember Alcala voted "no." (7-1-0)

The ordinance was adopted on roll call vote as follows: Ayes: Kennedy, Ortiz, Woelfel, Haynes, Swank, Blackburn and Harmon -7. Noes: Alcala -1. Absent: Preisner -1.

ORDINANCE NO. 19088 introduced by City Manager Norton N. Bonaparte, Jr., amending the "District Map" referred to and made a part of the Zoning Ordinances by Section 48-1.04 of the Code of the City of Topeka, by providing for certain changes in zoning on

property located at 742 and 746 NE Poplar Street from “C-2” Commercial District TO “R-2” Single Family Dwelling District placed on first reading May 6, 2008 was again presented.

(Z08/12)

Norton N. Bonaparte, Jr., City Manager gave the staff report.

Mayor Bunten asked if there were any exparte communications besides Councilmember Alcala. There were none declared.

Councilmember Alcala moved to adopt the ordinance. The motion seconded by Councilmember Ortiz carried unanimously. (8-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Kennedy, Alcala, Ortiz, Woelfel, Haynes, Swank, Blackburn and Harmon -8. Absent: Preisner -1.

Councilmember Alcala moved to postpone item 9D, an ordinance repealing City of Topeka Code Sections 106-44, 106-46, 106-47, 106-49, 106-52, and 106-74 concerning police officers and firefighters civil service commission and classification and pay plan; and item 9E, a charter ordinance amending City of Topeka Code Section A6-16 and Section A6-17 clarifying the civil service hiring process, for up to six months. The motion seconded by Councilmember Kennedy carried unanimously. (8-0-0)

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., adopting a Redevelopment Project Plan for the East Gate Redevelopment District pursuant to K.S.A. 12-1770 et seq., as amended was presented for first reading.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending the "District Map" referred to and made a part of the Zoning Ordinances by Section 48-1.04 of the Code of the City of Topeka, by providing for certain changes in zoning on property located at

3420 SW Fairlawn Road from "R-1" Single Family Dwelling District TO "C-2" Commercial District was presented for first reading. (Z08/13)

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending the "District Map" referred to and made a part of the Zoning Ordinances by Section 48-1.04 of the Code of the City of Topeka, by providing for certain changes in zoning on a portion of property located at the northwest corner of SW Wanamaker Road and SW 53rd Street having an address of 5127 SW Wanamaker Road from "RR-1" Residential Reserve District TO "C-2" Commercial District was presented for first reading. (Z08/14)

PRESENTATIONS BY THE CITY MANAGER, MAYOR AND MEMBERS OF THE COUNCIL, were presented.

Norton N. Bonaparte, Jr., City Manager announced three new initiatives that are geared towards improving communications between City government and the public that include the newly published e-newsletter "Extra-Ordinarily Topeka"; a public budget session scheduled on May 19, 2008 from 5:30 p.m. to 7:30 p.m. at the Central Park Community Center; and the Topeka 101: A Citizens Academy. He also announced upcoming Meet the Manager Sessions.

Councilmember Alcalá stated that a Code of Ethics violation has been filed against Councilmember Blackburn and Councilmember Preisner. He requested that staff prepare a document that would rescind the current City of Topeka Code of Ethics Policy. He also requested that the document be placed in committee for further review.

Councilmember Alcalá moved to discuss the Code of Ethics Policy violation at next week's work session. The motion was seconded by Councilmember Kennedy.

Councilmember Blackburn requested that information be distributed to the Council explaining how the City's Code of Ethics Policy applies to Kansas State Statute. He also asked

if it has been determined that he has a substantial interest in Brainstorm Development Group, L.L.C.

Braxton Copley, Interim City Attorney stated that he would distribute the policy information to the Council. He also stated that he would have to review the facts and make a determination at a later time because the current City of Topeka Code of Ethics Policy does not give clear directive on determining a policy violation.

Councilmember Alcalá raised a point of order. He questioned if Council was in violation of the attorney-client privilege laws in regards to the complaints filed against Councilmembers Blackburn and Preisner.

Mayor Bunten ruled that all discussions relating to the matter would be discussed at next week's work session.

Councilmember Blackburn challenged the ruling of the chair. He stated that he believes he should be allowed to respond to the accusations made against him.

Braxton Copley stated that the Council has the authority to request that both Councilmembers be present at next week's work session to answer questions.

Councilmember Kenney made a substitute motion to discuss the Code of Ethics Policy violation on June 3, 2008. The motion seconded by Councilmember Woelfel carried.

Councilmembers Alcalá and Ortiz voted "no." Councilmember Blackburn abstained. (5-2-1)

Councilmember Alcalá raised a point of order. He stated that delaying discussion on the issue would also cause a delay in the committee review of the policy.

Councilmember Ortiz asked how the Police Department plans to manage the pedestrian, as well as, the vehicle traffic at the SE Seward and Chandler Streets intersection during the Fiesta Mexicana.

Norton N. Bonaparte, Jr., reported that Police Officers would be present at the intersection during the event to insure the safety of pedestrians and to control traffic.

Councilmember Swank commended City employees for their efforts in publishing the newly released “Extra-Ordinarily Topeka” e-newsletter.

Councilmember Blackburn referenced K.S.A. 75-4301a(2). He asked if an elected official received \$2,000 compensation for services rendered to a business during the proceeding calendar year would it be considered a substantial interest in the business; and would voting on a zoning matter constitute the participation in the making of a contract as outlined in K.S.A 75-4304.

Braxton Copley, Interim City Attorney stated that voting on a zoning matter does not constitute the participation in the making of a contract as outlined in Kansas State Statute. He noted that payment received for services rendered would not be considered compensation if the money was used for the reimbursement of reasonable expenses and does not exceed the actual amount expended for expenses.

Councilmember Harmon asked if it is appropriate for the Council to engage in dialog with citizens who have signed up to speak under Public Comment about a zoning matter, and the citizen has already participated in the public hearing conducted by the Planning Commission on the same zoning matter.

Braxton Copley, Interim City Attorney stated that it is not appropriate for the Council to engage in dialog with citizens that have spoke to an issue presented at a Planning Commission public hearing because it could potentially re-open the public hearing.

Councilmember Alcalá stated that Topeka City Council Rules and Procedures 5.1(xiv) was established to allow the public the opportunity to speak to any issue that directly relates to City business during public comment.

Carol Torrence, Greg Owen, Gayle Alejos, Garry Forshee, Art Thompson, Connie Ulmer, Joe Foreman, Loretta Carman, John Ulmer, Pamela Foreman, Rosie Longfellow and Mike Esau appeared to speak under public comment.

NO FURTHER BUSINESS appearing the meeting was adjourned at 8:29 p.m.

Brenda Younger
City Clerk